



1898 Letter from Charles Porter Nichols, Containing an “Old Historic Document” of 1734

Actual Dates: October 12, 1898 [letter]; October 4, 1898 [article]; June 19, 1734 [“old historic document】.

Part of: American Numismatic Society, Early Correspondence, 1858-1908.

Main Correspondents: Charles Porter Nichols; ANS Librarian Herbert Valentine.

Main Subject: Nichols donates this “old historic document” as he thinks it will be of interest to members of the ANS.

Noted Documents:

- Nichols thanks the ANS for their most recent Proceedings, and donates the “old historic document” [October 12, 1898]
- The “old historic document” [June 19, 1734]
- Nichols’ handwritten listing of historical events related to the old historic document? [various dates]

See Also:

- The 1898 “Sun” newspaper article was found with the letter and may or may not further describe the “old historic document.”

, 1898.

BOSS COSBY AND JUDGE MORRIS.

A Notable Parallel—The First Attack on the Independence of Our Judiciary.

To THE EDITOR OF THE SUN—Sir: In view of the present attack upon the independence of the judiciary, it is interesting to turn back to the first instance of the kind occurring in the history of New York.

When the Colonial Governor, John Montgomerie, died, on the 1st day of July, 1732, Rip Van Dam, as Senior Councillor, succeeded to the office until the arrival of the new appointee from England. The man sent out was William Cosby, who a short time before had been Governor of Minorca, but had been removed from the office on account of his appropriation of the revenues and his wanton confiscation of the property of a Spanish merchant. Cosby was pompous in his disposition, possessed of a violent temper, and extremely avaricious. On his arrival in August, 1732, the Assembly voted him a gratuity of £750 for his alleged services in procuring the repeal of an obnoxious sugar bill. Lewis Morris, who was then Chief Justice of the Supreme Court, meeting him soon after the action of Assembly, told him of the present. But Cosby was only angered at the smallness of the amount, and shouted loudly: "Damn them, why didn't they add the shillings and pence? Do they think I came here for money?"

Within a short time Cosby served Van Dam with a copy of a royal order requiring him to pay over to Cosby one-half of the salary, perquisites and emoluments of the office received from the time of his appointment until Cosby arrived in America. Van Dam expressed his willingness to comply with the order if Cosby would account to him for what he had received, alleging that Cosby had collected some £8,000 more than had come into his hands, and, in fact, owed him £3,000. Cosby declined to accept this proposition, so Van Dam retained what he had collected.

Thereupon Cosby determined to bring suit, but he was puzzled to know how to proceed. The matter was one of account and could not be brought in the Supreme Court, as it possessed no equity jurisdiction. He could not sue in Chancery, as he himself was Chancellor, while a suit at common law would admit of a set-off by Van Dam, and he was fearful lest a jury should render a popular verdict against him. So finally he erected a Court of Equity by ordinance in the Supreme Court, under the name of the Equity side of the Exchequer, and directed Richard Bradley, the Attorney-General, to bring an action there in the King's name, although Cosby was the person beneficially interested in the result. The people of the province had always been most firmly opposed to the erection of an Equity Court without consent in General Assembly, and the Assemblies of 1702, 1708, 1711, and 1727 had passed resolutions condemning in the strongest terms the erection of any such court.

Lewis Morris, who had been Chief Justice of the Supreme Court since 1715, was one of the most distinguished men of his time. He had long represented the borough of Westchester in the Assembly, he had been a member of Council, a Boundary Commissioner, and was afterward Governor of New Jersey from 1738 to 1746. The second Justice of the Supreme Court was James De Lancey, afterward Governor, and the third was Frederick Philipse.

When the action was commenced by the Attorney-General, Van Dam was advised by his counsel, James Alexander and William Smith, the two most distinguished attorneys in the province, to bring suit against Cosby for the half of what Cosby had received over and above the amount collected by Van Dam. But the clerk of the court refused to affix a seal to the summons, and Cosby absolutely declined to answer the declaration. Accordingly, Van Dam was obliged to defend Cosby's action, and his counsel, by way of plea, offered

three exceptions to the being and jurisdiction of the court. The argument was set down for April 9, 1733. At the opening of the court, Lewis Morris delivered a long and exhaustive opinion against the jurisdiction of the court in equity causes, and then left the bench, refusing to have anything further to do with the case. The closing sentence of his opinion was this:

As I take it, the giving of a new jurisdiction in equity by letters patent to an old court that never had such jurisdiction before, or erecting a new Court of Equity by letters patent or ordinance of the Governor and Council without assent of the Legislature, are equally unlawful and not a sufficient warrant to justify this court to proceed in a course of equity, therefore, by the grace of God I, as Chief Justice of this province, shall not pay any obedience to them in that point.

It is needless to say that Cosby was intensely angered by the opinion. He wrote Morris a very savage letter, impugning his integrity and demanding a copy of what he had said in court. Morris sent him a copy of his opinion, together with a letter, a part of which follows:

As to my integrity I have given you no occasion to call it in question. I have been in this office almost twenty years, my hands were never fouled with a bribe, nor am I conscious to myself that power or poverty hath been able to induce me to be partial in the favor of either of them, and as I have no reason to expect any favor from you, so am I neither afraid nor ashamed to stand the test of the strictest inquiry you can make concerning my conduct. I have served the public faithfully and honestly according to the best of my knowledge, and I dare and do appeal to them for my justification.

Morris was then summarily removed from his office without the advice of Council, which was the course to be taken in such circumstances, although he had served for nearly eighteen years without complaint. His opinion was published and ran through two editions. In the following August DeLancey was commissioned as Chief Justice and Philipse Second Justice, and the people of the province thus saw the Judges of their Supreme Court arbitrarily reduced from three to two, for Daniel Horsemenden was not appointed Third Justice until 1736.

It was simply another case where the Boss did not consider that he had received "proper consideration" from the bench. The result was that the people of the province immediately became divided into two political parties, one the court party, favoring Cosby and his designs, the other the popular party, bound to resist to the utmost any infringement upon their rights and liberties. The popular party almost immediately started a newspaper in order that the people might become acquainted with the doings of their Governor, and the trial of John Peter Zenger followed, resulting in the establishment of the liberty of the press in North America, which Gouverneur Morris has eloquently described as "the morning star of that liberty which subsequently revolutionized America." In the latter part of 1734 Morris sailed for London armed with numerous petitions setting forth the evils of Cosby's administration and demanding his removal. Numerous delays occurred, and Cosby died before the London Board of Trade acted on the matter. He was successful, however, in procuring his reinstatement as Chief Justice of the Supreme Court.

The result of this first attack upon the independence of the judiciary was of incalculable benefit. The people of the province were thereafter absolutely united against all forms of governmental oppression, and the final triumph of popular government became greatly accelerated.

The same question is again up for decision. Are the Democrats of this city worthy successors of the men of 1734, or will they cast their votes in meek submission to the political boss, who, squat like a toad in front of their court, proclaims that no Democrats shall attempt to pass its portals unless they shall have first declared their willingness to submit to his dictation?

LIVINGSTON RUTHERFURD.

NEW YORK, Oct. 22.

Springfield Mass Oct 12th 1898

Herbert Valentine Esq

Librarian.

Dear Sir

Please accept many thanks for a copy
of the Annual Proceedings and Papers of the ANA Society
for 1898 rec yesterday. I enclose an old N.Y document
which I have had for 50 years or more, it may interest
some of the members of the Society. Please accept
the same. I have quite a number of large sheet
Catalogues of Coin Sales in different parts of the
Country, will look them up and send them to you
as I doubt if you have them entire.

Yours truly
Charles Porter Nichols

Enclosing old histonea
December - 1734.

Herbert Valentine Esq -
- Librarian -
- Amer Soc -
- 17 West 43^d Street -
- New York -



AN
EG
10.3.91
2

April 20th 1733 - Bumpton. Letter for Gov. Morris to the
Duke of Newcastle - The conduct of Gov. Morris
as Ch. Justice of the Peace of N.Y. & his reason
why Gov. & Cosby removed him from that
office, S.P.O. B.T. New York Vol. 22
Ee. 19. Copy. 60 fol.

(See Papers of Lewis Morris p. 19. There is a
long dispatch of the same character to the Duke of
Newcastle, dated May 3, 1732, printed in the
N.Y. Col. Docs., Vol. V p. 942, and in Vol VI pp 821-822)

N.Y. Hist. Soc. Collections Analyst. Indep. L. 158

Aug. 27 1739 - Letter for Lewis Morris Complaining of
his removal as C.J. of N.Y.

See N.Y. Col. Docs. Vol. V p. 951

Sue. 7 1734. Revery to Lords of Trade recommending
apt. of Commissioners & recommending
removal of Lewis Morris.
N.Y. Col. Docs. Vol. VI p. 24

See Collections Vol. IV p. 26

Smith's N.Y. II pp. 4-6. Under date of June 8, 1733
the P.C. ordered Gov. Cosby to transmit his
reasons for the removal etc.

See Vol. IV p. 19 N.Y. Col. Docs.

This suspension took place in April 1733

Nov. 7 1735 - Decision of the P.C. pronouncing the good
reasons for his removal insufficient.

Vol. IV p. 26

Cosby died in March 1736.

Morris returned to New Haven on Oct 1736,

Gold.

Cufic year 156 of Hegira
Mamoudeia 1213 ..

Byzantium John 2 - 1118-1143

Virgin crowning Emperor
obverse a seated Christ

Philip of Macedon - head

figure in chariot with two horses

Fajan son d'or - head with
inscription around -

man standing with boy standing
under his extended arm
inscription around.

Marcus Aurelius son d'or

head with inscription around
woman seated with balance
in one hand cornucopia in other
inscription around.

Gold A.D. 1071

Constantine 12th Monomachus

head of Christ with inscription
concave side the King with
heart in one hand & cross in the
other inscription around.

A.D. 408
Hedowinus 2nd head of King with
holding spear, inscription around
reverse Minerva seated with
figure in one hand & sceptre in other
inscription around

Julian A.D. 360 Head with inscription
reverse warrior dragging man
with one hand the other holds his
armour mounted on a pole spear
(this is a rude coin with hole)

Electrum

from Syracuse - head with wreath
reverse tripod & inscription
from Mytilene - Mars head with wreath
reverse woman's head hair in fillet
very small

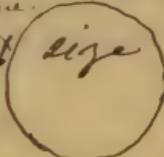
(L. D. M. of L. 1861) 1111 233

Gold

Berber dynasty in Spain



Autorinus Aug. Pius POPTR PXV
Pater Patriae Tribunus Potestas for the 15th time
thin old head with wreath tied behind
reverse robed standing figure.
with right hand extended holding globe
C O S · 1111 (Consul for the 4th time)



卷之三
目錄

New York
June 9th 1734

Pani
With the Greatest Honour & Loy-

My Lords

Yours Lordships most humble
and Most Obedient Servant

JJ.

W. Cosby

Harris City

330
24

To the Right Honourable The Lords of the Committee
of His Majesties Most Honourable Privy Council
for Plantation Affairs

May it Please your Lordships

In Obedience to your Lys Commands signified by your s:ps Order of the Day of January Last, requiring me to Lay before you all the Reasons which induced me to Remove M^r Lewis Morris from y^e place of the Justice of y^e Supreme Court of this Province I must humbly beg leave to Lay before your Lys what follows, as y^e Reasons (among many others) for which I removed y^e said M^r Morris from y^e said place of the Justice, & upon perusal whereof I Humbly presume to hope your Lys will be of opinion I did not displace him without good & sufficient cause.

Before I mention my Reasons for removing him, I pray your Lys permission to acquaint you with y^e cause that induced me soon after my arrival here to Enquire into his character, one is that when I went to y^e Jones to take y^e Bath as by his Majestis Instructions I am Directed to receive from M^r Morris, who was then President of y^e Council, y^e publick Seal, he made me wait some hours walking before y^e Door of y^e Council Room before he would deliver y^e Seal to me being all that while busie in having a Serue drawn up which he had given Ex parte in a cause in the Court of Admirall he himself had never taken y^e Bath as Chancellor.

Another is that y^e Day I arrived at New York, young Lewis Morris son to y^e late Chief Justice, before it was known that I was so near at hand, present a Petition to y^e President & Council for an Ordinance to Adjourn y^e Circuit Court of Albany for some short time because his Father being then President of the Council of Jersey waited to deliver up the Seals to me who was then Expected; The Petition was Granted, y^e Ordinance passed as he desired, and yet M^r Morris did not go to the Circuit Court which was loudly complained of and soon reached me and for

My Reasons for removing of M^r Lewis Morris from place of Chief Justice were on account
of his Notorious partiality in Administration of Justice of which I will only trouble you
long with the following Instances.

Some years since ye^t Dissenters in the Parish of Jamaica in this Province brought an
Egagement Against ye^t Church of England Minister for ye^t Church he preached in, & was Bishop
of, When ye^t Tryall came on the Dels Council Demurred to ye^t Plaintives Evidence M^r Morris
the Chief Justice desired them to write ye^t Demurrers telling them that if ye^t Jury found for
ye^t Clerks, he would grant ye^t Dels a New Tryall, the D^r Council Were Very Unwilling to do
it but fearing ye worst if they refused, they did Consent, & ye^t Jury found for ye^t Plaintives
The D^r Council moved of next term before Judgment for a New Tryall & urged his promise, he denied
at first that he gave any, But when they offered to make oath of it, he said a plain promise
ought not to be kept, & never would grant them a New Tryall, whereby they lost their
Church, & ye^t Defendants have ever since had it.

A Mother Instance of his Partiality is this, in 1712, in Town of West Chester Encl^d to the
Late Chief Justice Morris & George Clarke Esq^s half of their divided Land Jacobs & Courtland
& Others claiming part of these Lands, so surveyed to M^r Clark went to Survey them, The
people of West Chester hearing of it applied (as is said) to Morris for Advice, & he that as
it will, they got ye^t Sheriff & the Justices of ye^t Peace, William Hunt & one Doyle both Trichols-
ers of West Chester, under whom Morris claimed, to go on & make their finding Courtland & his
Partners surveying, they fined them for Rishers, & committed them to Prison Courtland upon
this Brings his Action Against Hunt & Doyle: On ye^t 2^d of June D^r Council Demurred, the D^r
Council joined in Demurser, & some Considerable time after Demurser being first Argued on
both sides Morris who was then Chief Justice & M^r Waller & a chancery second Judge Gave
Judgment for ye^t Dels this is, M^r Morris was Judge in the cause.

An flagrant Treachery committed by him, & in Ignorance of it, dread of people had of his power
when he was Chief Justice I beg leave to lay before your Honor a letter from M^r Jamison a lawyer
of this town of good Repute, having been formerly Pro-
General of this Province till he was displaced by Governor
Th^e great delay of Justice, in oppressing of Jurors &
of trouble, & putting them to trouble Expence both of time &

them a great deal
attendance on ye^t Courts
For the he

Not tho' he Constantly Visited y^e Courts to Eight or Nine in the Morning Yet he was seldom
Sitting till Twelve, One or two Or sometimes three in y^e Afternoon, tho' y^e Town & Others who
have Business Or Waiting from y^e hours to journeled to, Not knowing when to expect him,
& fearing to be found they happened not to be there, And it is with great concern I am
Laid under a Necessity Informing your L^r: that I cannot help Imputing those irregular hours
in his sittings (amongst severall others) to his pride in Making y^e Word wait his Leisure
And his intemperate drinking in which he often spends whole Nights: This my Lord was
bad Behaviour in y^e time in y^e Town of New York, but in y^e Circuits it was still more
intollerable, for the first hours of Adgournment & Sitting were not only like those in
Town but after y^e hours of y^e Peace who by Ordinance were obliged to attend him
while he was in y^e circuit, & other people who attend on those occasions have some
to y^e place where y^e Officers were appointed to be held, many of them came forty or
fifty miles from their habitations, & sometimes even after Juries have been summoned, —
Witnesses suspended parties attened, & the Justices of y^e Peace & other officers have
gone to y^e place appointed for holding y^e Circuit Court, & by an Ordinance they are divided,
& have waited there several days in expectation of y^e Chief Justice, who then alone was to
go y^e circuits, he has not come to hold y^e Court tho' in Health & Able to have done it.
And I beg leave to inform your L^r: that the damage that one County by that of
Albany suffered by one ~~great~~ neglect of M^r. Morris holding y^e Circuit Court was
computed at about £400.

I should tire your L^r: Should I enter farther into y^e particulars of his behaviour
on the circuit, two however I beg leave to mention.

One going to Albany he delayed his time so long that he had much a doe to reach y^e
Court at half past 12 of the County on y^e Day which by the Ordinance it was to be Open, but
getting first within the borders he opened y^e Court & Adgourned it to y^e City of Albany
y^e next day being y^e third, On that Day likewise he Opened it but Doubting whether the
first opening & Adgourning was regular he left y^e Bench without doing any business
and set all this time Magistrates of y^e County, Jurymen, Sutlers & Witnesses were obliged
to attend to their great expence & loss of time.

The other was in y^e Lenox County, but at another time M^r. Morris having opened the Court,

he desirous of it according to his custome to the same m^r night, one setting up an Inde-
Night & Drinking hard, he sayd he bed all y^e Next Day till Near sun set, When y^e People
growing uneasie at his Delays, Some of his Friends or his Servants awakid him, he got his
& Company being Admited into his Chamber, he askid what hour it was they answered
allmost night, how can that be said y^e Chief Justice y^e sun is but just rising, saying
so, he took up his Fiddle & played y^e Company a tune.

These two particulars I affirme your Sp^t had from some of y^e Lawyers who were there
at the time, & from several other Persons of good credit, the County was very uneasie but
Not knowing how to get redress were oblig'd to bear it.

And in severall of the Courts he has neglected to go y^e Circuits for many years, tho'
his salary for the very service was in 1715 augmented from £130 -
a Year

That such Neglects (especially that of Albany in 1712) were very expensive & incon-
venient to the Courts in Generall as well as to those who had causes to be tryed, the
Relation of Mr. Morris's own son for Accounting the Circuit C^t of Albany will
testifie to your Lordships, And so the cause for Desirousing that Circuit Court
Ceased on my to v^e here y^e Very day y^e Petition desirous to Ordinance Office
y^e Mr. Morris refuted to go & hold it without acquainting me with it or fine
Giving me any return for such his Neglect, tho' the clamours of y^e People were
very loud on that occasion, Besides Mr. Morris Junior's Petition & Certificate of the
Attorney General of the Clerks of y^e Supreme Court & Mr. Garretson's Affavit
will be laid before your Sp^t whereby his great Delay of Justice his Breach
& Other ill Treatment of his Majesties Attorney General in y^e Execution of His Del-
and the great ¹ by the Sheriff of Albany had to summon a Jury, from y^e
terror y^e People were Under of being unmercifully detained by him from their
Habitations & subjects at a vast expence will be eas'd very fully

And here for to acquaint your Sp^t that Mr. Morris was Under an Obligation
to go the Circuits by y^e Governor which time
Grew Expensiv^e & his Predecessors were not; In 1691 a salary of £130 a Year was estab-
lished on y^e Chief Justice of this Province to be continued till 1715 during
which time he was held at Burg^t But in 1715 y^e Assembly finding that as the County
is multiplied & that there would be frequent occasion for Courts
of Oyer